

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**JULY 27, 2001**

<b>IN RE:</b>	)	
	)	
<b>BELLSOUTH TELECOMMUNICATIONS INC.'S</b>	)	<b>DOCKET NO.</b>
<b>TARIFF FOR CONTRACT SERVICE</b>	)	<b>01-00170</b>
<b>ARRANGEMENT (NC99-A136-00)</b>	)	

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**ORDER GRANTING APPROVAL OF BELLSOUTH  
CONTRACT SERVICE ARRANGEMENT (NC99-A136-00)**

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This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference on April 17, 2001 on the tariff filing of BellSouth Telecommunications, Inc. ("BellSouth") for approval to offer Contract Service Arrangement No. NC99-A136-00 ("CSA"). BellSouth filed Tariff No. 01-00170 on February 21, 2001 with a proposed effective date of March 23, 2001. On March 23, 2001 BellSouth submitted a letter to the Authority in which BellSouth voluntarily agreed to extend the effective date of this tariff to April 17, 2001.

Based upon careful consideration of the tariff filing, the Authority makes the following findings and conclusions:

1. The purpose of this CSA is to provide a Volume and Term Discount to the customer identified in the filing. Through this arrangement, the customer agrees to meet an annual revenue commitment of eighteen million dollars (\$18,000,000.00) in exchange for a twelve percent (12%) discount.

2. The Executive Summary included with the CSA filing states that the term of the CSA is thirty-six (36) months. The CSA, however, does not include such a general statement. Instead, the Main Agreement defines the term as follows: “The term of the Main Agreement commences on the Effective Date and ends on the date on which the term of the last Attachment hereto ends.”<sup>1</sup> Attachment 7, the only attachment included with the filing, provides: “The term of this Attachment may be extended for one or more additional years upon the mutual agreement of the parties.”<sup>2</sup> Lastly, Exhibit 2 to Attachment 7 lists the term as three (3) years.<sup>3</sup>

Based on the language of the CSA, the Directors find that the term of the CSA is three (3) years with an optional renewal. Consistent with other decisions of this agency any optional renewal after the expiration of the three (3) year term is contingent upon approval by the Authority.

3. This CSA contains two termination provisions. The first relates to the termination of the underlying specific service and is linked to the tariff provision applicable to the underlying service. The second applies to the termination of the Volume and Term agreement. Because the first termination provision is contained in the underlying, previously approved tariff, it is only the second termination provision that is before the Authority in this docket.

4. In its February 21, 2001 cover letter included with the CSA filing, BellSouth stated:

The Addendum to this CSA includes appropriate language addressing the termination liability charges that would apply if the customer terminates this CSA early without cause. Therefore, the customer notice, as required by the Directors

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<sup>1</sup> BellSouth Business<sup>SM</sup> Master Services Agreement, sec. II (Feb. 21, 2001). The CSA is comprised of two documents; the Main Agreement and Attachment 1.

<sup>2</sup> *Id.* Attachment 7, Terms and Conditions for BellSouth Telecommunications, Inc. (“BST”) Regulated Services, para. 7N.

<sup>3</sup> *See id.* Exhibit 2 to Attachment 7, Terms and Conditions for BellSouth Telecommunications, Inc. (“BST”) Regulated Services, para. 1.

on September 12, 2000 in Docket 00-00720 (CSA MS99-8999-00), will not be necessary in this case.<sup>4</sup>

On April 5, 2001, the Authority received a letter from BellSouth in which BellSouth recognized: “[T]he language in the Addendum is not identical to that contained in the customer notice . . . . Therefore, BellSouth is agreeable to providing the customer notice for this CSA as we have done with other CSAs.”<sup>5</sup>

5. This CSA contains provisions for incentive awards and commitment shortfalls. BellSouth provided an addendum executed by the customer clarifying the fact that the commitment shortfalls do not apply upon the customer’s early termination of the CSA.

6. BellSouth provided an addendum executed by the customer stating that the customer was aware of competitive alternatives available to it in Tennessee and that the customer and BellSouth have agreed on the termination provisions and that the termination charges represent a reasonable estimate of BellSouth’s damages in the event of termination.

7. BellSouth supplied cost data which indicates that the price of services offered under the CSA exceed their long-run incremental costs. Based on this information, BellSouth has complied with the statutory price floor established in Tenn. Code Ann. § 65-5-208(c).

8. No parties sought to intervene in this docket.

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<sup>4</sup> The termination provisions in the CSA require the customer provide written notice of termination sixty (60) days prior to the effective date of the termination and pay termination charges equal to “(i) The amount of discounts received for the life of this Agreement or for the previous 12 months, whichever is less, and (ii) The prorated portion of the Agreement implementation and tracking costs . . . .” BellSouth Business<sup>SM</sup> Master Services Agreement, Attachment 7, Exhibit 2, para.2G. (Feb. 21, 2001). During the January 23, 2001 Authority Conference, it was established that where the termination liability limitation language appears in the CSA or addendum thereto, BellSouth is not required to provide additional notification to the customer upon approval of the CSA by the Authority. With its filing, BellSouth will provide information to the Authority regarding the existence of such language in the CSA or addendum thereto. See Transcript of Proceedings, Jan. 23, 2001, pp. 10-14 (Authority Conference).

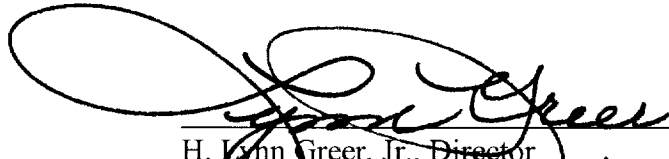
<sup>5</sup> On April 4, 2001, BellSouth provided the Authority with a copy of the notification letter BellSouth sent to the customer.

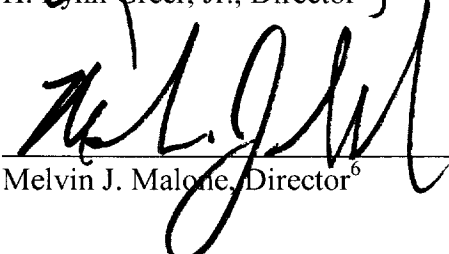
Based on the foregoing findings and conclusions, the Directors unanimously determined that the CSA in this docket should be granted.

**IT IS THEREFORE ORDERED THAT:**

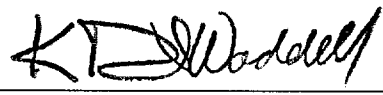
BellSouth Telecommunications, Inc.'s Tariff No. 01-00170, which seeks approval of Contract Service Arrangement No. NC99-A136-00 is hereby granted.

  
Sara Kyle, Chairman

  
H. Lynn Greer, Jr., Director

  
Melvin J. Malone, Director<sup>6</sup>

ATTEST:

  
K. David Waddell, Executive Secretary

<sup>6</sup> Director Malone has noted that, generally, the underlying tariff termination provisions with respect to the specific services that may be used to meet the volume and term requirements of a Volume and Term CSA contain buyout clauses, sometimes amounting to a ninety percent (90%) or one-hundred percent (100%) buyout. Notwithstanding Director Malone's approval of this Volume and Term CSA, he remains of the opinion that tariff termination provisions, however triggered, containing such buyouts are so potentially anticompetitive as to warrant modification by the agency on a going-forward basis.